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December 17, 2021

**BY EMAIL & ECF**

The Honorable Jesse M. Furman  
United States District Judge  
Southern District of New York  
40 Foley Square  
New York, NY 10007

**RE: United States v. Michael Avenatti  
19 Cr. 374 (JMF)**

Dear Judge Furman:

We write regarding the privilege review by, and corresponding disclosures to, the Government in connection with the seizure and search of Michael Avenatti's iPad. We respectfully request that the Court issue an Order precluding the Government's Privilege Review Team from disclosing any of the contents of Mr. Avenatti's iPad to the Prosecution Team until December 23, 2021 at 6:30 p.m. so that the defense has an adequate opportunity to finish its independent privilege review with the in-person assistance of Mr. Avenatti.

Until 2020, Mr. Avenatti was a practicing attorney with clients throughout the United States. In the course of his and his firm's representation of clients in various legal matters, Mr. Avenatti regularly used his electronic devices, including his iPad, to conduct business, communicate with his clients, and seek the counsel of his own attorneys. See also Dkt. Nos. 115 and 143. On September 9, 2021, and over Mr. Avenatti's objection, the Court authorized the Government's Privilege Review Team to review Mr. Avenatti's iPad for any potentially privileged materials in the first instance before disclosing the contents of the iPad to the Government's Prosecution Team. See United States v. Avenatti, --- F. Supp. 3d ---, 2021 WL 4120539, at \*4 (S.D.N.Y. Sep. 9, 2021). In doing so, the Court also required that, "before any contents from the iPad are shared with any member of the prosecution team, the Government shall give Avenatti reasonable notice and an opportunity to raise with the Court any objections to the filter team's privilege determinations." Id. at \*6.

On September 13, 2021, the Government produced the entire contents of the

iPad to the defense and the Privilege Review Team. On November 30, 2021, the Privilege Review Team finished its review of the iPad and identified 46 files as potentially privileged—nine notes, 32 images, and five videos. On December 15, 2021, and after discussions with one of the Privilege Review Team’s attorneys, the defense emailed the Privilege Review and Prosecution Teams to provide notice of its intent to assert a privilege as to the 46 items flagged by the Privilege Review Team. Simultaneously, the defense also requested leave until December 27, 2021 to complete its independent privilege review of the remaining items from the iPad before any disclosures to the Prosecution Team.

In response, the Prosecution Team objected to the defense’s proposed date, and—for the first time ever—stated that the Privilege Review Team would disclose to the Prosecution Team the entire contents of the iPad (minus the aforementioned 46 files) at 6:30 p.m. on December 17, 2021. The defense explained to the Government that this arbitrary deadline was unreasonable in light of the difficulties we have encountered undertaking a meaningful privilege review without being physically present alongside Mr. Avenatti. Indeed, during a hearing yesterday before Judge James V. Selna, who is presiding over Mr. Avenatti’s case in the Central District of California, Judge Selna granted Mr. Avenatti’s request to modify his bail conditions in that district so that he could travel to NYC to prepare for trial alongside undersigned counsel.<sup>1</sup>

At this time, the defense is arranging Mr. Avenatti’s travel to New York City for next week per the conditions set by Judge Selna, and we expect to promptly complete our independent privilege review of the iPad shortly upon Mr. Avenatti’s arrival. Accordingly, we respectfully request leave to complete our privilege review by 6:30 p.m. on December 23, 2021 (four days earlier than the date we proposed to the Prosecution Team by email). Given the complicated issues at play, and the fact that the defense is asking for a mere six days beyond the arbitrary December 17, 2021 deadline set by the Prosecution Team, which it set for the first time on December 15, 2021, the defense respectfully submits that its proposal is reasonable and adequately balances Mr. Avenatti’s rights under the Federal Rules of Evidence, the Fifth and Sixth Amendments to the Constitution, his rights under the work-product doctrine, and the rights of his former clients to maintain their attorney-client privilege, with the Prosecution Team’s need to review the iPad’s contents for any materials responsive to the search warrant.

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<sup>1</sup> It is worth noting that Judge Selna granted Mr. Avenatti’s request over the Government’s objection, and expressly noted that there is no adequate substitute for in-person trial preparation.

Respectfully Submitted,

/s/

Cc: AUSA Robert Sobelman  
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Prosecution Team  
  
AUSA Lisa Korologos  
Privilege Review Team

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